

Managing Unclaimed Property

www.indianaunclaimed.com/reporting

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Introduction

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About the Office of the Indiana Attorney General
Please see www.indianaunclaimed.com/reporting for more information about Unclaimed Property. Please see <http://www.in.gov/attorneygeneral/> for a detailed description of the legal function, services, and structure of the OAG and its divisions.

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Agenda

- History and Background
- Common Terms
- Uniform Acts
- Purpose of the Law
- Unclaimed Property in Indiana
- Where to Report
- States' Responsibilities
- Holder Obligations
- State Expectations

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Agenda (cont'd)

- Fines & Penalties
- Internal Controls/Fraud
- Leading Industry Practices
- Examples of Reportable Property
- Online Reporting
- Helpful Links and Contact Info

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Traditional Escheat



- Origins in British Common Law
- The concept for unclaimed property law originated with the English common law of *Bona Vacantia* (vacant goods), which stated that the title to abandoned land having no designated owner would revert back to the king as a matter of right.
- This permanent transfer of property rights to the king was called **escheat**.

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Custodial Escheat

- Today, in the United States, the concept has been adapted to apply to intangible personal assets
- **However, the states do not take title, as did the king; they serve as custodian of the property in perpetuity on behalf of the rightful owner.**
- Nonetheless, this custodial relationship continues to be referred to as escheat.
- Over time, states have revised and refined their various unclaimed property laws, resulting in over **\$35 billion** in collections; held for the benefit of owners whose whereabouts are at least temporarily unknown.

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Uniform Unclaimed Property Act

- The Uniform Unclaimed Property Act has been enacted by every state, in one form or another. It is sometimes referred to as the W.C. Fields Law because when the entertainer died, his heirs spent years trying to contact hundreds of banks throughout the United States to locate his assets.
- The Uniform Unclaimed Property Act allows for a central location in each state where people can search for their unclaimed funds.
- The eastern states have had unclaimed property laws since the 18th century. Wyoming was the last to enact its law in 1994.
- **Indiana:** Established by law passed by the Indiana General Assembly in **1967**.

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Unclaimed Property Law

- The Unclaimed Property Law **requires businesses to review their records each year** to determine whether they hold any funds, securities, or other property that has been unclaimed.
- These businesses, or holders, make **annual reports and transfer** the property to the appropriate states.
- The business does not have to be incorporated in Indiana or even conduct business in the state, to have reportable property for Indiana. **The only requirement is that the business records show that the owner's last known address is in Indiana.**
- The custodial nature of the unclaimed property law obliges each state to maintain unclaimed funds and related owner information for claim by the rightful owner. All states make a diligent effort to locate and refund these funds to the rightful owner, at no cost to the owner.

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Purpose of the Unclaimed Property Law

- Protect the interests and property rights of the lost owner.
- Relieve the holders from the expense and liability associated with the property.
- Ensure that any economic windfalls benefit the public, not an individual holder.

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Review of Common Terms

Abandoned (Unclaimed) Property: Intangible personal property, and in some instances tangible personal property, that has gone unclaimed for a specific period of time by its rightful owner.

Activity: Action taken on property *by the owner* which has the effect of tolling or restarting the running of the applicable dormancy period under the law of the relevant jurisdiction.

Examples: owner making a deposit or withdrawal, receipt of a written memorandum by the holder or response to a customer survey.

Aggregate Amount: The threshold dollar value of an individual owner's account that will require owner detail included on the company's unclaimed property report. This may also trigger additional due diligence efforts. In Indiana, the aggregate amount is \$50, meaning all individual accounts equal to or greater than \$50 must be identified on the report and due diligence performed.

Common Terms (cont'd)

Due Diligence: The degree of effort required by law that a holder must perform to locate the owner before reporting and remitting property to the state. Generally speaking, the required activity involves the holder sending some form of written notice to the owner.

Dormancy (Abandonment) Period: The continuous period of time that must elapse without any activity being taken by the owner before property will be considered "presumed abandoned" and, thus, reportable in accordance with state unclaimed property laws.

Date of Last Activity: The date of last contact by the owner as evidenced by the records of the holder.

Holder: The entity that is in possession of, or controls, property belonging to another. The term Holder is widely used in state reporting instructions to refer to the entity responsible for filing an unclaimed property report.

Common Terms (cont'd)

Indemnification: Refers to the protection from subsequent claims (whether made by an owner or by another state) that may be provided by a state to a holder that remits property to a state.

Intangible Property: Personal property that has no intrinsic value but is merely the representation or evidence of valuable property rights. Intangible property includes stock certificates, checks, drafts, deposits, customer credit balances, gift cards, security deposits, unpaid wages and royalty payments.

Last Known Address: A description, as identified in the holder's books and records, of the location of the owner of unclaimed property sufficient for the purposes of the delivery of mail.

Owner: Any person, as identified in a holder's books and records, having a legal or equitable interest in property held by a holder, including, but not limited to, a creditor, claimant or payee.

Where to Report

1. State of owner's last known address
2. State of holder's incorporation or domicile if address not known
3. *State of holder's incorporation or domicile if address of apparent owner is in a foreign country and if holder is incorporated or domiciled in the U.S.

**Provision language added in the 1981 Uniform Act*

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The States' Responsibility

- Release and indemnify the holder from liability
- Secure the funds in a custodial capacity
- Make efforts to locate the owners
- Pay claims



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Unclaimed Property in Indiana

- The only Unclaimed Property office in the nation under administration of the Attorney General's Office
- IC 32-34-1
- Remittance due with annual report
- Strong Consumer Protection Focus: the Attorney General's Office holds the property for 25 years while attempting to locate the rightful owner or their heirs. During this time, individuals who are legally entitled may file a claim for the property with the Unclaimed Property Division.
- Until claimed by the rightful owners, funds are used for the good of all Indiana citizens.
- If the money goes unclaimed after 25 years, it is permanently absorbed into the General Fund and can no longer be claimed.
- The Attorney General annually publishes the name of the owner in a newspaper in the county of the owner's last known address as submitted by the holder.
- The Attorney General participates in the Indiana State Fair, Regional Senior Expos, Library Days, and the Indiana Black Expo to maintain awareness of the program and free public service.

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Indiana: Compliance

- Message and intent is still 100% consumer protection driven.
- Successful return is only possible with diligent annual compliance, as required by law.
- The OAG is currently offering a one-time **Amnesty program** to allow businesses to come into compliance and remit property in arrears without consequence of financial penalty.
- An outreach and education program is currently underway to assist businesses in fully understanding and meeting their reporting obligations.
- The state will enforce penalties and initiate state audits after the **Amnesty window closes on October 31, 2010**.
- If audited, companies may be required to provide financial statements, employment records, physical evidence of due diligence processes, zero report records, or acceptable rational in using statistical extrapolation for periods where records were not available.

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Holder Obligations

- Duty to **protect the funds** until reported and transferred to the state
- Duty to **file** a report
- Duty to perform **due diligence**
- Duty to **remit** the property
- Duty to **maintain copies** of the reports and supporting documentation



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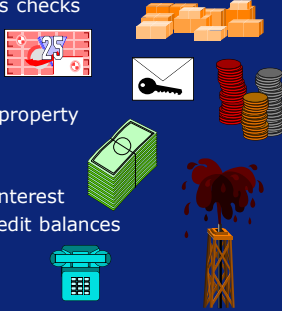
State Expectations

- Proper due diligence
- Aggregate amounts
- Electronic reporting
- Standardized Reporting Codes
- Reports that reconcile to the detail and payment
- Copies of reports that have been filed

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Examples of Reportable Property

- Safe deposit boxes rented by financial institutions
- Money orders, travelers checks
- Uncashed checks
- Insurance proceeds
- Utility deposits
- Securities and related property
- Payroll, commissions
- Gift cards/certificates
- Mineral proceeds and interest
- Accounts receivable credit balances and refunds
- Rebates



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Top Reasons for Inactivity on an Account

- Owner is deceased
- Owner is ill or unable to keep up with finances
- Owner is beneficiary
- Owner has forgotten
- Owner is unaware

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Fines & Penalties

A holder can be assessed penalties and/or interest for:

- Failure to report/remit the property
- Failure to comply with the statute

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Common Reporting Issues/Mistakes

- Overpayment—usually, payment w/o any records attached
- Underpayment—amount on remitted check does not reconcile w/ amt identified on report
- Unauthorized use of estimation techniques
- Underestimation of time and resources necessary to comply with applicable requirements
- Wrong reporting method used
- Report sent to incorrect state and/or wrong state agency and/or wrong address
- Missing appropriate signatures
- Missing copies of due diligence correspondence
- Missing data and/or poor data quality
- Pre-escheat
- Incorrect NAUPA codes

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Enforcement of Due Diligence

- Evidence/copies of written notification and reminders
- Dates of mail drops
- Full address of owner of record
- Examples of poor effort

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Leading Industry Practices

- Determine potential liability.
- Get into compliance with state statutory requirements.
- Develop and maintain detailed processes and procedures for tracking and reporting unclaimed property.
- Conduct internal audits of unclaimed property processes and procedures.
- Form an unclaimed property committee that is responsible for compliance.
 - Include key personnel, including but not limited to internal audit, legal counsel, upper management, treasurer, comptroller and tax director.

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Online Reporting Guide

- www.indianaunclaimed.com/reporting
- Under Indiana law, almost every business organization (and government body) is required to report and remit unclaimed property to the Indiana Attorney General's Unclaimed Property Division whenever the property owner cannot be found.
- Holders are required to report unclaimed property annually by **November 1st**. The reporting deadline for insurance companies is **May 1st**.
- In order to report online, **you must request access to Indiana's online reporting system.**

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Registration

- Go to the Registration tab at the top.
- Complete all required fields
 - **SAVE** the password you create, you will need it at a later time.
 - In the final box **YOU MUST** list all businesses and FEINs for which you will be reporting
- Click Submit

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Customize/Change User Preferences

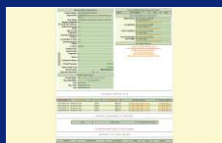
Here you can change your password, contact information, and reminder e-mail preferences

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View/Edit Staged Reports

These changes must be done **BEFORE** you have mailed the remittance sheet and check.

- To view the list of reports you have uploaded or manually entered go to
 - [Holder Reporting](#)
 - [Holder Report Data Entry](#)
 - [View Current Staged Reports](#)
- Here you can view/edit properties, print a remit sheet or delete a report



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Unclaimed Property Websites/Resources

- www.indianaunclaimed.com/reporting
- www.uppo.org
- www.unclaimed.org
- Bureau of National Affairs Corporate Law Portfolio
Unclaimed Property Portfolio 74-2nd
www.bna.com



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QUESTIONS/CONTACTS

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